



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Troy M. Cumings, Esq.
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900 Fifth Third Center
111 Lyon Street NW
Grand Rapids, MI 49503-2487

APR 27 2015

RE: MUR 6859

Dear Mr. Cumings:

On August 6, 2014, the Federal Election Commission notified your clients, Friends of John Moolenaar and Gwen D. Lang in her official capacity as treasurer ("State Committee"), Moolenaar for Congress and Gwen D. Lang in her official capacity as treasurer ("Federal Committee"), John Moolenaar, Value for Michigan and John P. Yob in his official capacity as treasurer ("VFM"), John P. Yob, and Strategic National Campaign Management LLC ("Strategic National") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act").

On April 21, 2014, the Commission found, on the basis of the information in the complaint and information provided by you, that: there is no reason to believe that the State Committee violated 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)) and 11 C.F.R. § 110.3(d) by making impermissible transfers to the Federal Committee; there is no reason to believe that the Federal Committee violated 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)) and 11 C.F.R. § 110.3(d) by accepting impermissible transfers from the State Committee; there is no reason to believe that the Federal Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)); and, there is no reason to believe that John Moolenaar violated 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)) and 11 C.F.R. § 110.3(d).

Also on April 21, 2014, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe that VFM, John P. Yob, or Strategic National violated the Act in connection with the allegations in this matter. Accordingly, the Commission closed its file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal

MEMORANDUM

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** John Moolenaar

MUR 6859

6 Moolenaar for Congress and Gwen D. Lang
7 in her official capacity as treasurer

8 Friends of John Moolenaar and Gwen D. Lang
9 in her official capacity as treasurer

10 Value for Michigan and John P. Yob in his official
11 capacity as treasurer

12 Strategic National Campaign Management LLC

13 John P. Yob

14
15 **I. INTRODUCTION**

16 This matter was generated by a complaint alleging that Michigan State Senator and
17 Congressional candidate John Moolenaar violated the Federal Election Campaign Act of 1971,
18 as amended (the "Act"),¹ and Commission regulations by using funds from his state campaign
19 committee, Friends of John Moolenaar ("State Committee"), to pay for consulting services
20 performed on behalf of his federal campaign committee, Moolenaar for Congress (the "Federal
21 Committee"), during the 2014 primary election period.² Specifically, Complainant asserts that
22 the State Committee indirectly paid for the services of Federal Committee vendor Strategic
23 National Campaign Management LLC ("Strategic National") when it donated \$98,000 to Value
24 for Michigan ("VFM"), a state political action committee whose treasurer is Strategic National's
25 principal, John P. Yob.³ The complaint further alleges that the Federal Committee has "run afoul
26 of the FEC's reporting requirements" because the Federal Committee failed to report payments

¹ On September 1, 2014, the Act was transferred from Title 2 to Title 52 of the United State Code.

² Compl. at 1-3. See 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)); 11 C.F.R. § 1103(d).

³ *Id.* at 1-2. See 52 U.S.C. § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)); 11 C.F.R. § 1103(d).

1 to, or in-kind contributions from, Strategic National.⁴ In a joint response, Respondents deny the
2 allegation that the State Committee funds were used to pay for services provided to the Federal
3 Committee and request that the Commission take no action in the matter.⁵

4 As discussed below, the Commission finds no reason to believe that Respondents
5 violated the Act and Commission regulations in connection with these allegations.

6 II. FACTUAL AND LEGAL ANALYSIS

7 A. Facts

8 John Moolenaar was a 2014 candidate for Congress in Michigan's 4th Congressional
9 district.⁶ At the time of his candidacy, Moolenaar was a sitting Michigan state senator.⁷ During
10 the 2014 Congressional election, the Federal Committee hired Strategic National as a vendor to
11 provide political consulting and direct mail services. The Federal Committee disbursed a total of
12 \$4,400 to Strategic National and incurred debts with Strategic National totaling \$138,011.75.⁸

⁴ *Id.* at 2. See 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).

⁵ Resp. at 1-3 (Sept. 29, 2014).

⁶ See FEC Form 1 (Statement of Organization) (Apr. 14, 2014); FEC Form 2 (Statement of Candidacy) (Apr. 14, 2014). Moolenaar won the Republican primary election on August 5, 2014, and the general election on November 4, 2014. See Michigan Department of State, 2014 Official Michigan Primary Election Results for 4th Congressional District at <http://miboecfr.nictusa.com/election/results/14PRI/06004000.html>; 2014 Official Michigan General Election Results at <http://miboecfr.nictusa.com/election/results/14GEN/06004000.html>.

⁷ Moolenaar did not seek re-election to the state senate in 2014 and his term ended on December 31, 2014. See Declaration of John Moolenaar ¶ 4 (Sept. 29, 2014). The State Committee was officially dissolved in February of 2015. See The State Committee: 2015 Annual Campaign Statement; Letter from Amy Lovegrave, Analyst, Disclosure Division, Michigan Bureau of Elections to Friends of John Moolenaar (Feb. 17, 2015).

⁸ See Moolenaar for Congress: 2014 October Quarterly Report; 2014 Amended October Quarterly Report; and 2014 Year End Report.

1 John P. Yob is the chief executive officer and registered agent of Strategic National.⁹ Yob is
2 also the treasurer of Value for Michigan,¹⁰ a state political action committee that registered with
3 the Michigan State Bureau of Elections as an Independent Committee on February 24, 2011.¹¹

4 On July 24, 2014, the State Committee donated \$98,000 to VFM for the purpose of
5 transferring "excess funds."¹² This donation exhausted most of the State Committee's remaining
6 cash on hand of \$104,554.95.¹³ VFM disclosed relatively little activity from its inception in
7 2011 until it received the State Committee's \$98,000 donation. After receiving the State
8 Committee's donation, VFM donated \$52,000 to eleven state-level candidates and one candidate
9 for the Board of Regents of the University of Michigan between July 25, 2014, and September

⁹ See Strategic National Campaign Management, LLC, Articles of Organization, Michigan Department of Labor and Economic Growth, Bureau of Commercial Services (Mar. 23, 2009). Yob is also the principal of four other consulting companies that provided a variety of services to the Federal Committee during the 2014 election including, yard signs, data lists, phone calls to voters, endorsement calls, telephone town hall, polling, and support messaging: E-Design Company, Victory Processing, LLC ("Victory Processing"), Victory Phones, LLC ("Victory Phones"), and Victory Phones Live, LLC ("Victory Live"). State filings indicate that Yob is the chief executive officer for Victory Processing, Victory Phones and Victory Live. See Articles of Organization, Michigan Department of Labor and Economic Growth, Bureau of Commercial Services (July 13, 2012; Nov. 7, 2012; Feb. 21, 2012). See also Resp. at 3. The Federal Committee disbursed approximately \$52,601.84 and incurred \$74,329.12 in debts to the five companies operated by Yob by end of the primary and general elections. See Moolenaar for Congress: 2014 July Quarterly Report; 2014 Pre-Primary Report; 2014 Amended October Quarterly Report; 2014 October Quarterly Report; 2014 Pre-General Report; 2014 Post-General Report.

¹⁰ It appears that VFM operates out of the same address as Strategic National, Victory Processing and Victory Phones – 190 Monroe Avenue NW, Suite 500, Grand Rapids, MI.

¹¹ In Michigan, an Independent Committee is formed to support one or more candidates and may also support or oppose ballot questions. An Independent Committee may not accept contributions from corporations, joint stock companies, labor organizations, domestic dependent sovereigns, from persons holding an interest in one of the three casinos located in Detroit or from foreign nationals. In certain circumstances, an Independent Committee may give candidate committees ten times the amount a political action committee or individual may donate to the candidate. See *Candidate Committee Manual*, Michigan Department of State Bureau of Elections, App. H. (Committee Types), available at http://www.michigan.gov/documents/APPENDIX_H_157777_7.pdf. VFM is not registered with the Commission as a political committee.

¹² See Friends of John Moolenaar 2014 October Quarterly Campaign Statement; Value for Michigan Late Contribution Report (July 25, 2014).

¹³ On August 24, 2014, the State Committee donated \$1,600 to the Moolenaar Leadership Fund for the same purpose and ended the reporting period with a balance of \$2,472.04. See Friends of John Moolenaar 2014 October Quarterly Campaign Statement.

1 23, 2014.¹⁴ Then, VFM donated \$45,500 to twelve state-level candidates and the same
2 candidate for the University of Michigan Board of Regents between October 21, 2014, and
3 November 20, 2014.¹⁵

4 Complainant alleges that the purpose of the State Committee's \$98,000 donation to VFM
5 was to compensate Strategic National for services it performed for the Federal Committee.¹⁶ The
6 complaint provides a copy of a strategy memo dated July 21, 2014, that Strategic National
7 purportedly prepared for the Federal Committee, and asserts that the Federal Committee reported
8 no disbursements to Strategic National on the 2014 July Quarterly Report (covering activity
9 between April 1, 2014, and June 30, 2014) or Pre-Primary Report (covering activity between
10 July 1-16, 2015).¹⁷ The complaint notes that Strategic National prepared this strategy
11 memorandum just before the State Committee donated \$98,000 to VFM on July 24, 2014, and
12 concludes that Moolenaar used VFM as an intermediary to funnel state funds to a company
13 providing services to his federal campaign, which constitutes a "clear" violation of 11 C.F.R.
14 § 110.3(d) and resulted in the State Committee subsidizing the Federal Committee with
15 impermissible funds.¹⁸

¹⁴ Value for Michigan 2014 Amended October Quarterly Campaign Statement.

¹⁵ Value for Michigan 2015 February Quarterly Campaign Statement.

¹⁶ Compl. at 1-2.

¹⁷ *Id.* at 2, Ex. C. The memorandum details the Federal Committee's district-wide advertising strategy, discusses the campaign's internal tracking of voter support, and concludes that the race between Moolenaar and Mitchell was "very close" with the results to be determined by turnout and the continuous support by outside groups. *Id.*, Ex. C.

¹⁸ Compl. at 2. Complainant also posits that this scheme may have involved an explicit agreement whereby Yob and Strategic National would not charge the Federal Committee for consulting services if, at the conclusion of the primary campaign, Moolenaar donated the remaining funds in this state campaign account to VFM. *Id.* Moolenaar donated the vast majority (but not all) of his state campaign funds to VFM but did so in advance of, and not after, the primary election. Friends of John Moolenaar 2014 Amended October Quarterly Report.

1 In a joint response, Respondents deny the allegations that they violated the Act and
2 Commission regulations by transferring funds from the State Committee to VFM and assert that
3 the complaint “has no merit.”¹⁹ Respondents assert that the transfer is allowed under a Michigan
4 law requiring terminating candidate committees (such as the State Committee) to disburse its
5 unexpended funds.²⁰ According to the Michigan state statute cited in the response, “upon
6 termination of a candidate committee,” unexpended funds of that candidate committee not
7 eligible to be transferred to another candidate committee of that candidate may be “given to an
8 independent committee.”²¹ The response also points out that VFM, as a state registered
9 independent committee, is prohibited by Michigan law from paying Yob, or anyone else, for
10 services provided to a federal campaign.²²

11 The response includes declarations signed by Moolenaar and Yob in which they
12 specifically deny engaging in a scheme to pay Yob for services performed on behalf of the
13 Federal Committee with non-federal Funds donated to VFM. Moolenaar states in his declaration
14 that the \$98,000 contribution to VFM was done in connection with dissolving his state
15 committee and that he understood that the funds would be used to make contributions to state
16 candidates consistent with the Michigan law.²³ Further, Moolenaar avers that there was “no
17 agreement with any person that the \$98,000 contribution to VFM would be used to pay Yob or

¹⁹ Resp. at 1-2.

²⁰ *Id.* at 2.

²¹ See Michigan Campaign Finance Act § 169.245(45)(1) and (2)(f) (“MCL”). To be eligible for dissolution, candidate committees must have no assets or outstanding debts. See *Candidate Committee Manual*, Michigan Department of State Bureau of Elections, App. W (Dissolution of a Committee), available at http://www.michigan.gov/documents/APPENDIX_H_157777_7.pdf.

²² Resp. at 1-2. See MCL 169.205(4).

²³ Resp. at 2; Moolenaar Decl. ¶¶ 7, 8.

any of his companies” for services rendered to the Federal Committee.²⁴

Like Moolenaar, Yob explicitly states in his declaration that he had “no agreement with Senator Moolenaar or any other person” that the \$98,000 would be used to pay him or any of his companies for services rendered to the Federal Committee.²⁵ According to Yob, he intended to use the funds to make contributions and expenditures in accordance with Michigan law.²⁶

Finally, the response states that Complainant’s allegation that the Federal Committee failed to accurately report services performed by Yob and his companies is factually inaccurate.²⁷ According to Respondents, the Federal Committee did not disclose payments relating to the services reflected in the July 21 memorandum in its 2014 Pre-Primary Report because that document was created three days after the committee closed its “books” for that reporting period.²⁸ The Federal Committee filed its 2014 Pre-Primary Report, covering activity engaged in between July 1 and July 16, on July 24, 2014.²⁹

B. Legal Analysis

The complaint alleges that the State Committee’s \$98,000 donation to VFM was payment for services that Strategic National provided to Moolenaar’s federal campaign by Strategic National. The Act prohibits a federal candidate, a candidate’s agent and entities established,

²⁴ Moolenaar Decl. ¶ 9.

²⁵ Declaration of John P. Yob ¶ 5 (Sept. 29, 2014).

²⁶ Yob Decl. ¶ 6.

²⁷ Resp. at 3.

²⁸ *Id.*

²⁹ *Id.* See Moolenaar for Congress 2014 July Quarterly Report and 2014 Pre-Primary Report. Respondents also state that, contrary to Complainant’s allegations, the Federal Committee properly reported payments to Yob’s other companies during both the 2014 July Quarterly and Pre-Primary reporting periods. Specifically, the Federal Committee disclosed disbursements totaling \$11,188.91 to Victory Phones and \$12,259.12 to E Design Company. According to the response, additional payments to Yob or any of his companies made after July 17, 2014 would be disclosed in subsequent reports. Resp. at 3.

1 financed, maintained or controlled by them from soliciting, receiving, directing, transferring or
2 spending funds in connection with a federal election, unless those funds are subject to the
3 limitations, prohibitions and reporting requirements of the Act.³⁰ The transfer of funds or assets
4 from a candidate's campaign committee or account for a nonfederal election to his or her
5 principal campaign committee or other authorized committee for a federal election is
6 prohibited.³¹ Thus, if the State Committee paid for services provided to the Federal Committee,
7 the Federal Committee has received an prohibited in-kind contribution from the State Committee
8 in violation of 52 U.S.C. § 30125 (formerly 2 U.S.C. § 441i(e)(1)(A)).

9 The complaint argues that the timing and amount of the State Committee's donation and
10 the interrelationships between the respondents demonstrates that there was a scheme to use
11 Moolenaar's state campaign funds to benefit his federal candidacy. These circumstantial facts,
12 however, do not appear to be supported by any available information showing a connection
13 between the State Committee's donation and the services provided to the Federal Committee by
14 Strategic National. In particular, Moolenaar's and Yob's declarations specifically deny
15 funneling the State Committee's \$98,000 donation to VFM to pay Yob or Strategic National for
16 consulting services provided to the Federal Committee. Based on the information available, it
17 appears that Moolenaar's actions were intended merely to divest his state candidate committee
18 by donating funds to VFM and are apparently in compliance with state law. Moolenaar did not
19 seek re-election to the state senate in the spring of 2014 and represents that he does not intend to

³⁰ 52 U.S.C. § 30125 (formerly 2 U.S.C. § 441i(e)(1)(A)).

³¹ 11 C.F.R. § 110.3(d). *See also* MUR 6267 (Paton For Senate) (Paton's federal committee received prohibited transfer of funds when Paton's state senate committee paid for polling and a survey benefiting his federal campaign); MUR 5646 (Cohen for New Hampshire) (Cohen's federal committee received prohibited transfer of funds when Cohen's state committee paid for start-up expenses related to his U.S. Senate campaign); and MUR 5426 (Dale Schultz for Congress) (Schultz's federal committee received prohibited transfer of funds when the Schultz state committee paid for expenses that the candidate incurred in connection with his federal election).

1 run for state office in the near future.³² The State Committee's donation of "excess funds" to
2 VFM, an independent state political action committee, appears consistent with state requirements
3 that terminating candidate committees disperse unexpended campaign funds and with the
4 allowable ways to disperse those funds.³³ In addition, after Mollenaar won the August 5, 2014,
5 federal primary election, the State Committee continued to donate "excess" campaign funds —
6 specifically to Moolenaar's own leadership PAC — and ended the October Quarterly reporting
7 period with an ending balance of \$2,420.04. Finally, all but \$500 of the State Committee's
8 \$98,000 donation to VFM was, in turn, donated by VFM to twenty-one state and local candidates
9 between July 25, 2014, and November 20, 2014.³⁴

10 There is also no available information indicating that the Federal Committee failed to
11 properly report disbursements to Strategic National in the 2014 July Quarterly and 2014 Pre-
12 Primary Reports. The Federal Committee reported disbursing \$4,400 to Strategic National for
13 political consulting on September 11, 2014 and incurring debts totaling \$99,511.75 to that firm
14 for the same services, as of its 2014 October Quarterly Report. There is no evidence that
15 Strategic National began providing services to the Federal Committee prior to July 21, 2014,
16 which is the date of the strategy memorandum prepared by the company for the federal
17 campaign. Therefore, it does not appear that these particular services had to be disclosed prior to
18 the Federal Committee's 2014 October Quarterly Report, covering activity between July 17,
19 2014, and September 30, 2014, as alleged in the complaint.

³² Moolenaar Decl. ¶ 5.

³³ See MCL 169.205(4).

³⁴ Value for Michigan 2014 Amended October Quarterly Campaign Statement; 2015 February Quarterly Campaign Statement.

1 Given the specificity of the declarations provided by Moolenaar and Yob and the
2 corroborating information outlined above, the Commission finds that there is no reason to
3 believe that Moolenaar, the Federal Committee, and the State Committee violated 52 U.S.C.
4 § 30125(e)(1)(A) (formerly 2 U.S.C. § 441i(e)(1)(A)) or 11 C.F.R. § 110.3(d) or that the Federal
5 Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) in connection with the
6 State Committee's donation to VFM and the services performed by Strategic National on behalf
7 of the Federal Committee. Further, the Commission finds that there is no reason to believe that
8 VFM, Yob, and Strategic National violated the Act in connection with the allegations in this
9 matter.